

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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U.S. DIST. COURT
MIDDLE DIST. OF LA.

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LIVERPOOL AND LONDON
STEAMSHIP PROTECTION &
INDEMNITY ASSOCIATION LIMITED

CIVIL ACTION

VERSUS

NO. 01-136-D

M/V ABRA (EX KAPPA UNITY),
IN REM

**RULING ON CLAIMANT'S MOTION TO
VACATE WRONGFUL ARREST OF M/V ABRA**

BACKGROUND

On February 9, 2001, this court issued an order arresting the M/V ABRA ex KAPPA UNITY (ABRA), which vessel was on the Mississippi River within the venue of this court. The request for the arrest of the ABRA was made by Liverpool and London Steamship Protection and Indemnity Association Limited (L & L) for unpaid marine insurance premiums known as "calls." The marine insurance had been provided by L & L to the previous unrelated owner of the ABRA (Kappa) and covered the vessel for the years 1994-1999.¹

In its complaint for the arrest of the ABRA, presented to this court on

¹ The actual owner of the vessel prior to its sale to Interforce was Cordex Shipping Co., Ltd., a Cyprus entity. Kappa Shipping, Ltd. was the former managing operator of the ABRA ex Kappa Unity and was a member of the L & L Club.

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February 9, L & L alleged that it was owed \$229,102.16 plus accrued interest for the coverage it had provided to the ABRA from August 9, 1994 through February 20, 2000.

On February 13, 2001, the present owner of the ABRA, Interforce Shipping, Ltd. (Interforce), moved the court to set security for the release of the vessel and filed a counter claim against L & L for damages for the wrongful arrest of the vessel. On that same date, L & L amended its complaint to allege a breach of a maritime contract and claimed a lien for that breach on the vessel for the amount owed L & L for unpaid insurance premiums for all vessels it had insured in the Kappa fleet bringing the total amount claimed to \$829,509.66. L & L requested that security for the release of the ABRA be set, in view of its amended complaint, at \$1,200,000. After hearing arguments by the parties, the court set security in that amount and ordered a Rule E(4)(f) hearing for February 15, 2001. At the request of the parties, that hearing was rescheduled and held on February 16, 2001. At the hearing, both parties introduced evidence and made oral arguments. The court then continued the security for the release of the vessel in the amount of \$1,200,000.

THE ISSUES

In its complaint, as amended, L & L alleges that it has a valid maritime lien for the full amount of the total unpaid calls due for L & L's providing insurance to all vessels in the Kappa fleet by virtue of certain language in L & L's handbook. It specifically alleges that it has a maritime lien on the ABRA for \$229,102.16 for

insurance provided to that vessel for which the premiums have not been paid. It asserts that such insurance is a “necessary” thereby creating a maritime lien under United States law and that L & L’s rules permit, if not mandate, the application of United States law under the facts of this seizure.

Further, L & L maintains that it has the right under its rules to arrest the ABRA for payment of all amounts due by the Kappa fleet for breach of the contract between it and Kappa and that this breach of contract forms the basis of a maritime lien on the ABRA.

Interforce counters that this matter under the rules of entry of L & L, is governed by English law and that English law does not provide or recognize a maritime lien for unpaid insurance premiums.

Interforce additionally sets forth that the choice of law provisions in L & L’s handbook mandate the use of English substantive law and where the choice of law provisions are ambiguous such should be resolved against L & L.

Further, Interforce urges that a conflict of laws analysis should be applied and that such an analysis would establish that English law applies to this dispute.

For the reasons set forth, the court finds that United States law applies under the facts of this arrest; however, a maritime lien only exists on the ABRA for the unpaid premiums for insurance provided by L & L to that vessel for the years 1994-1999 and not for that provided to the Kappa fleet.

THE RULING

A post seizure hearing under Rule E(4)(F) of the Supplemental Rules for Certain Admiralty and Maritime Claims E(4)(f) of the Federal Rules of Civil Procedure requires only that the court find that there are reasonable grounds for the arrest of the ABRA and if so, that the court fix an appropriate bond for the release of the vessel. **North of England Protecting and Indemnity Ass. Ltd. v. M/V Nara** 2000 AMC 681, 682-683 (E.D. La. 1999).

It is undisputed that United States law classifies insurance provided to a vessel as a “necessary” and any unpaid premiums for such insurance gives rise to a maritime lien. 46 U.S.C. §971 and §31342, **Equilease v. M/V Sampson** 793 F.2d 598 (5th Cir. 1986). On the other hand, English law provides no such lien for unpaid insurance premiums. *The Heinrich Bjorn* (1883) 1 L.R. 8pd 151 and Declaration of Jonathan C.B. Gilman, Q.C. attached to Interforce’s “Supplemental Memorandum and Expert Opinion in Support of Motion to Vacate Wrongful Arrest of M/V ABRA.”

The rules of the L & L Club for the years it provided insurance on the ABRA, 1994-1999, vary to some degree in the provisions pertinent to the claim before this court. However, the rules of the L & L Club set forth in its 1999 handbook provide very clearly that it was the intent of the members of the Club that United States law could apply under the facts now before the court.

1999 Rule 47 provides:

Nothing herein shall affect or prejudice the right of the Association to take action and/or commence proceedings in any jurisdiction to enforce its right of lien on ships or to otherwise obtain security by seizure, attachment or arrest of assets for any amounts owed to the Association.

Rule 48 states:

These rules and any special terms of entry form a contract of insurance between the Association and a Member, and subject to the right of the Association under Rule 47C to enforce its right of lien in any jurisdiction in accordance with local law in such jurisdiction, shall be construed in accordance with English law.

These provisions, contrary to the position of the claimant, Interforce, are clearly intended to permit L & L to commence proceedings to enforce its right of lien in any jurisdiction, and to so enforce that right in any jurisdiction in accordance with the local law of such jurisdiction.² Such an interpretation is consistent with the holdings of other courts. See **North of England v. M/V NARA**, 2000 AMC 681 (E.D. La. 1999) and **Westone Bank v. Continuity**, 1994 AMC 2059 (W.D. Wash. 1994).

It is also clear that the law of this circuit is that choice of law provisions such as set forth in the above quoted rules of the L & L Club are “presumptively valid” and do “apply to the creation of maritime liens.” **Sembawang Shipyard, Ltd. v. Charger, Inc.**, 955 F.2d 983,986 (5th Cir. 1992). In its rules, L & L has carved out

² The same language is contained in Rules 43 and 44 in the handbooks of the L & L Club for the years 1996-1998.

exceptions to the general rule that English law governs in this matter and has specifically provided for the ability to avail itself of any remedy provided by, in this instance, United States law.

Interforce contends that even if the 1999 rules of L & L allow for the enforcement of a lien pursuant to United States law, there is no lien created for the non-payment of insurance premiums because English law recognized no such lien. Such a reading of the quoted rules would lead to a meaningless interpretation of the Club rules. The court finds that the L & L Club rules are unambiguous and meant for the Club to have the ability to use the law of whatever jurisdiction it could avail itself. If English law were to govern every possible situation, then the provisions relating to right of enforcement in any jurisdiction would not be given any effect whatsoever.

The court, therefore, concludes that L & L can avail itself of the lien for necessities under United States law which includes a lien on the ABRA for unpaid insurance premiums due for the coverage on that vessel and has made out a prima facie case on this point.

L & L has also asserted a claim for unpaid premiums provided to ships other than the ABRA that were part of the Kappa fleet. L & L's basis for this is that the failure of Kappa to pay the premiums due L & L for all of the ships in the Kappa fleet creates a maritime contract lien and under the rules of the L & L Club, specifically Rule 5E, such a contract lien can be enforced by the arrest of any vessel of the

insured fleet. The court disagrees with this conclusion. United States law provides that a maritime lien of whatever kind is a special property right in a particular vessel and such law does not recognize the exercise of a lien on one vessel for the goods or services rendered to another vessel or a fleet of vessels. See **Silver Star Enterprises, Inc. v. Saramacca M/V**, 82 F.3d 666, 669 (5th Cir. 1996). The court in **Silver Star**, *supra* at page 669 refers to and comments on the **Equilease**, *supra* and in so doing, points out that the charterers purchased insurance for each vessel as is what occurred in the instant case.

The insurance purchased for the ABRA was not necessary to or a benefit for any other vessel in the Kappa fleet. Any maritime lien applied to the ABRA must only be for insurance provided to that vessel and no other.

L & L's reliance on the holding of **North of England Protecting and Indemnity Association, Ltd. v. M/V NARA**, *supra*, is unfounded on this issue. That case and the cases cited therein do not support the proposition that a breach of contract lien applies to more than one vessel in an in rem proceeding.

The United States law is clear that a maritime lien must attach to the vessel receiving the benefit. See **Equilease**, *supra*, and **The Knickerbocker**, 83 F. 843, 844 (E.D. NY 1894).

It is important to note that the instant action is one brought under Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims and there is no personal action against the owner or prior owner of the ABRA.

For these reasons, the court finds that L & L does not present a prima facie case that it can recover the entire amount owed by Kappa for non-payment of insurance premiums for vessels other than the ABRA, Ex Kappa Unity.

Therefore, the arrest of the ABRA is maintained, but the amount of security for her release is reduced from \$1,200,000 to \$300,000. This matter will be assigned for trial and pretrial conference shortly.

Baton Rouge, Louisiana, this 12th day of April, 2001.



JAMES J. BRADY
UNITED STATES DISTRICT JUDGE